

Rule 1, Ariz. R. Crim. P.

STATUTORY CONSTRUCTION: Rule of *expressio unius est exclusio alterius* means that expression of one thing is the exclusion of another...Revised 12/2009

When construing a statute, the court's goal is to fulfill the intent of the legislature that wrote it. *State v. Peek*, 219 Ariz. 182, 184, 195 P.3d 641, 643 (2008); *State v. Jernigan*, 221 Ariz. 17, ¶ 9, 209 P.3d 153, 155 (App. 2009). The best and most reliable index of the legislature's intent is the statute's language and, when the language is clear and unequivocal, that language determines the statute's construction. *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 8, 152 P.3d 490, 493 (2007); *City of Phoenix v. Johnson*, 220 Ariz. 189, 191, ¶ 9, 204 P.3d 447, 449 (App. 2009). Therefore, if a court finds no ambiguity in the statute's language, the court must give effect to that language and may not employ other rules of construction to interpret the provision. *North Valley Emergency Specialists, L.L.C. v. Santana*, 208 Ariz. 301, 303, 93 P.3d 501, 503 (2004); *State v. Nelson*, 208 Ariz. 5, 7, ¶ 7, 90 P.3d 206, 208 (App. 2004), citing *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991). Only if the legislative intent is not clear from the plain language of the statute do courts consider other factors such as the statute's context, subject matter, historical context, effects and consequences, and spirit and purpose. *Watson v. Apache County*, 218 Ariz. 512, 516, ¶ 17, 189 P.3d 1085, 1089 (App. 2008); *Sanderson Lincoln Mercury, Inc. v. Ford Motor Co.*, 205 Ariz. 202, 205, ¶ 11, 68 P.3d 428, 431 (App. 2003) citing *Wyatt v. Wehmuller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991). If a statute's meaning is less than clear, courts may use other rules of statutory construction. One such rule is "*Expressio unius est exclusio alterius*," which means, "The expression of one thing is the exclusion of another." *State v. Roscoe*, 185 Ariz. 68, 72, 912 P.2d 1297, 1299

(1996); *Martens v. Industrial Com'n of Arizona*, 211 Ariz. 319, 320, ¶ 9, 121 P.3d 186, 187 (App. 2005). That is, the specific expression of one or more items of a class indicates an intent to exclude all items of the same class that are not specifically expressed. *Midtown Medical Group, Inc. v. State Farm Mut. Auto. Ins. Co.*, 220 Ariz. 341, 347 n.9, ¶ 22, 206 P.3d 790, 796 (App. 2008), *citing Sw. Iron & Steel Indus., Inc. v. State*, 123 Ariz. 78, 79, 597 P.2d 981, 982 (1979). For example, *Powers v. Carpenter*, 203 Ariz. 116, 51 P.3d 338 (2002), dealt with a statute that expressly applied to petitions for the following ballot measures: initiative measures, referenda, and measures dealing with the formation or modification of political subdivisions of Arizona. The statute did not mention nominating petitions; therefore, following the rule of *expressio unius est exclusio alterius*, the Arizona Supreme Court found that the statute did not cover nominating petitions. *Id.* at 118, ¶ 10, 51 P.3d at 340.

The rule serves only as an aid in determining the intent of the legislature, and “it should not be applied when context and public policy contradict.” *State v. Williams*, 209 Ariz. 228, 236, ¶ 31, 99 P.3d 43, 51 (App. 2004). The rule is “not definitive or an invariable standard of interpretation, but if a statute specifies under what conditions it is effective, we can ordinarily infer that it excludes all others.” *Boynton v. Anderson*, 205 Ariz. 45, 47-48, ¶ 8, 66 P.3d 88, 90-91 (App. 2003), *citing Roscoe, supra*, and *State v. Fell*, 203 Ariz. 186, 189, ¶ 11, 52 P.3d 218, 221 (App. 2002).